

1 Kenneth M. Seeger (SBN 135862)  
Brian J. Devine (SBN 215198)  
2 SEEGER SALVAS LLP  
455 Market Street, Suite 1530  
3 San Francisco, CA 94105  
Telephone: 415.981.9260  
4 Facsimile: 415.981.9266

5 Attorneys for Plaintiffs  
James Johnson and Sandra Johnson

6 Steven J. Boranian (SBN 174183)  
7 REED SMITH LLP  
Two Embarcadero Center, Suite 2000  
8 San Francisco, CA 94111-3922  
Telephone: 415.583.8700  
9 Facsimile: 415.391.8269  
Email: sboranian@reedsmith.com

10 Attorneys for Defendant  
11 Eon Labs, Inc.

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 JAMES JOHNSON, in his individual capacity  
16 and as Executor of the Estate of Mark James  
Johnson, deceased, and SANDRA JOHNSON,

17 Plaintiff,

18 vs.

19 EON LABS, INC., and DOES 1 to 20, inclusive,

20 Defendant.  
21

No.: C 06-05769 SC

**STIPULATION AND ~~[PROPOSED]~~  
PROTECTIVE ORDER**

1           1. PURPOSES AND LIMITATIONS

2  
3           Disclosure and discovery activity in this action are likely to involve production of  
4 confidential, proprietary, or private information for which special protection from public disclosure  
5 and from use for any purpose other than prosecuting this litigation would be warranted.  
6 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
7 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all  
8 disclosures or responses to discovery and that the protection it affords extends only to the limited  
9 information or items that are entitled under the applicable legal principles to treatment as  
10 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated  
11 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule  
12 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied  
13 when a party seeks permission from the court to file material under seal.  
14

15           2. DEFINITIONS

16  
17           2.1 Party: any party to this action, including all of its officers, directors, employees,  
18 consultants, retained experts, and outside counsel (and their support staff).  
19

20           2.2 Disclosure or Discovery Material: all items or information, regardless of the  
21 medium or manner generated, stored, or maintained (including, among other things, testimony,  
22 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
23 discovery in this matter.  
24

25           2.3 "Confidential" Information or Items: information (regardless of how generated,  
26 stored or maintained) or tangible things that qualify for protection under standards developed under  
27 F.R.Civ.P. 26(c).  
28

1                   2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
2 Producing Party.

3  
4                   2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery  
5 Material in this action.

6  
7                   2.6 Designating Party: a Party or non-party that designates information or items that it  
8 produces in disclosures or in responses to discovery as "Confidential".

9  
10                  2.7 Protected Material: any Disclosure or Discovery Material that is designated as  
11 "Confidential."

12  
13                  2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained  
14 to represent or advise a Party in this action.

15  
16                  2.9 House Counsel: attorneys who are employees of a Party.

17  
18                  2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
19 their support staffs).

20  
21                  2.11 Expert: a person with specialized knowledge or experience in a matter pertinent  
22 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
23 consultant in this action and who is not a past or a current employee of a Party or of a competitor of  
24 a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a  
25 competitor of a Party's. This definition includes a professional jury or trial consultant retained in  
26 connection with this litigation.

27  
28                  2.12 Professional Vendors: persons or entities that provide litigation support services

1 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
2 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3  
4 3. SCOPE

5  
6 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
7 defined above), but also any information copied or extracted therefrom, as well as all copies,  
8 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
9 parties or counsel to or in court or in other settings that might reveal Protected Material.

10  
11 4. DURATION

12  
13 Even after the termination of this litigation, the confidentiality obligations imposed by this  
14 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
15 otherwise directs.

16  
17 5. DESIGNATING PROTECTED MATERIAL

18  
19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
20 or non-party that designates information or items for protection under this Order must take care to  
21 limit any such designation to specific material that qualifies under the appropriate standards. A  
22 Designating Party must take care to designate for protection only those parts of material, documents,  
23 items, or oral or written communications that qualify – so that other portions of the material,  
24 documents, items, or communications for which protection is not warranted are not swept  
25 unjustifiably within the ambit of this Order.

26  
27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
28 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily

1 encumber or retard the case development process, or to impose unnecessary expenses and burdens  
2 on other parties), expose the Designating Party to sanctions.

3  
4 If it comes to a Party's or a non-party's attention that information or items that it designated  
5 for protection do not qualify for protection at all, or do not qualify for the level of protection initially  
6 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the  
7 mistaken designation.

8  
9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
10 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material  
11 that qualifies for protection under this Order must be clearly so designated before the material is  
12 disclosed or produced.

13  
14 Designation in conformity with this Order requires:

15  
16 (a) for information in documentary form (apart from transcripts of depositions  
17 or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"  
18 at the top of each page that contains protected material. If only a portion or portions of the material  
19 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
20 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,  
21 the level of protection being asserted.

22  
23 A Party or non-party that makes original documents or materials available for  
24 inspection need not designate them for protection until after the inspecting Party has indicated which  
25 material it would like copied and produced. During the inspection and before the designation, all of  
26 the material made available for inspection shall be deemed "CONFIDENTIAL" After the inspecting  
27 Party has identified the documents it wants copied and produced, the Producing Party must  
28 determine which documents, or portions thereof, qualify for protection under this Order, then, before

1 producing the specified documents, the Producing Party must affix the appropriate legend at the top  
 2 of each page that contains Protected Material. If only a portion or portions of the material on a page  
 3 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
 4 by making appropriate markings in the margins) and must specify, for each portion, the level of  
 5 protection being asserted.

6  
 7 (b) for testimony given in deposition or in other pretrial or trial proceedings  
 8 that the Party or non-party offering or sponsoring the testimony identify on the record, before the  
 9 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
 10 portions of the testimony that qualify as "CONFIDENTIAL." When it is impractical to identify  
 11 separately each portion of testimony that is entitled to protection, and when it appears that  
 12 substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors,  
 13 offers, or gives the testimony may invoke on the record (before the deposition or proceeding is  
 14 concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which  
 15 protection is sought and to specify the level of protection being asserted. Only those portions of the  
 16 testimony that are appropriately designated for protection within the 20 days shall be covered by the  
 17 provisions of this Stipulated Protective Order.

18  
 19 Transcript pages containing Protected Material must be separately bound by  
 20 the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as  
 21 instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

22  
 23 (c) for information produced in some form other than documentary, and for  
 24 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
 25 container or containers in which the information or item is stored the legend "CONFIDENTIAL." If  
 26 only portions of the information or item warrant protection, the Producing Party, to the extent  
 27 practicable, shall identify the protected portions, specifying whether they qualify as "Confidential."  
 28



1           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items as “Confidential” does not, standing alone, waive the  
3 Designating Party’s right to secure protection under this Order for such material. If material is  
4 appropriately designated as “Confidential” after the material was initially produced, the Receiving  
5 Party, on timely notification of the designation, must make reasonable efforts to assure that the  
6 material is treated in accordance with the provisions of this Order.

7  
8           6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9  
10           6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
11 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
12 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
13 its right to challenge a confidentiality designation by electing not to mount a challenge promptly  
14 after the original designation is disclosed.

15  
16           6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
17 Party’s confidentiality designation must do so in good faith and must begin the process by conferring  
18 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel  
19 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief  
20 that the confidentiality designation was not proper and must give the Designating Party an  
21 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
22 designation is offered, to explain the basis for the chosen designation. A challenging Party may  
23 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
24 process first.

25  
26           6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
27 designation after considering the justification offered by the Designating Party may file and serve a  
28 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that

1 identifies the challenged material and sets forth in detail the basis for the challenge. Each such  
2 motion must be accompanied by a competent declaration that affirms that the movant has complied  
3 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with  
4 specificity the justification for the confidentiality designation that was given by the Designating  
5 Party in the meet and confer dialogue.

6  
7 The burden of persuasion in any such challenge proceeding shall be on the Designating  
8 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
9 question the level of protection to which it is entitled under the Producing Party's designation.

10  
11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12  
13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
14 or produced by another Party or by a non-party in connection with this case only for prosecuting,  
15 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
16 the categories of persons and under the conditions described in this Order. When the litigation has  
17 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL  
18 DISPOSITION).

19  
20 Protected Material must be stored and maintained by a Receiving Party at a location  
21 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

22  
23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
25 disclose any information or item designated CONFIDENTIAL only to:

26  
27 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
28 employees of said Counsel to whom it is reasonably necessary to disclose the information for this



1 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
2 hereto as Exhibit A;

3  
4 (b) the officers, directors, and employees (including House Counsel) of the  
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed  
6 the "Agreement to Be Bound by Protective Order" (Exhibit A);

7  
8 (c) experts (as defined in this Order) of the Receiving Party to whom  
9 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
10 Bound by Protective Order" (Exhibit A);

11  
12 (d) the Court and its personnel;

13  
14 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
15 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
16 Protective Order" (Exhibit A);

17  
18 (f) during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
20 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
21 Protected Material must be separately bound by the court reporter and may not be disclosed to  
22 anyone except as permitted under this Stipulated Protective Order.

23  
24 (g) the author of the document or the original source of the information.

25  
26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
27 LITIGATION.  
28

1 If a Receiving Party is served with a subpoena or an order issued in other litigation  
2 that would compel disclosure of any information or items designated in this action as  
3 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax, if  
4 possible) immediately and in no event more than three court days after receiving the subpoena or  
5 order. Such notification must include a copy of the subpoena or court order.

6  
7 The Receiving Party also must immediately inform in writing the Party who caused  
8 the subpoena or order to issue in the other litigation that some or all the material covered by the  
9 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
10 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
11 caused the subpoena or order to issue.

12  
13 The purpose of imposing these duties is to alert the interested parties to the existence  
14 of this Protective Order and to afford the Designating Party in this case an opportunity to try to  
15 protect its confidentiality interests in the court from which the subpoena or order issued. The  
16 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
17 confidential material – and nothing in these provisions should be construed as authorizing or  
18 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

19  
20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21  
22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
23 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
24 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
25 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the  
26 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and  
27 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound”  
28 that is attached hereto as Exhibit A.

1           10. FILING PROTECTED MATERIAL

2  
3           Without written permission from the Designating Party or a court order secured after  
4 appropriate notice to all interested persons, a Party may not file in the public record in this action  
5 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
6 with Civil Local Rule 79-5.

7  
8           11. FINAL DISPOSITION

9  
10          Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after  
11 the final termination of this action, each Receiving Party must return all Protected Material to the  
12 Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
13 compilations, summaries or any other form of reproducing or capturing any of the Protected  
14 Material. With permission in writing from the Designating Party, the Receiving Party may destroy  
15 some or all of the Protected Material instead of returning it. Whether the Protected Material is  
16 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party  
17 (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that  
18 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed  
19 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
20 summaries or other forms of reproducing or capturing any of the Protected Material.  
21 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
22 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such  
23 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
24 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

25  
26          12. MISCELLANEOUS

27  
28               12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to

1 seek its modification by the Court in the future.

2  
3 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
4 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
5 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
6 Party waives any right to object on any ground to use in evidence of any of the material covered by  
7 this Protective Order.

8  
9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10  
11 DATED: January 5, 2007 /s/  
12 BRIAN DEVINE  
13 SEEGER SALVAS LLP  
14 Attorneys for Plaintiffs

15 DATED: January 5, 2007 /s/  
16 STEVEN J. BORANIAN  
17 REED SMITH LLP  
18 Attorneys for Defendant

19  
20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: 1/10/07  
22 HONORABLE SA  JUDGE  
23 UNITED STATES

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
 understand the Stipulated Protective Order that was issued by the United States District Court for the  
 Northern District of California on [date] in the case of *Johnson v. Eon Labs, Inc.*, Case Number C  
 06-05769 SC. I agree to comply with and to be bound by all the terms of this Stipulated Protective  
 Order and I understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any  
 information or item that is subject to this Stipulated Protective Order to any person or entity except  
 in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number]  
 as my California agent for service of process in connection with this action or any proceedings  
 related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]